

REMARKS/ARGUMENTS

Claims 1-43 and 45-48 are pending. Claim 29 has been amended for clarification. Claims 1, 31 and 45 have been amended to address minor syntactic issues. No new matter is added.

All claims stand rejected. Applicants respectfully request reconsideration in view of the Declaration Under 35 USC § 1.132 that accompanies this response.

The Rejections Under 35 §102

Claims 29 and 30 were rejected under 35 USC §102 as being anticipated by Diehl et al., U.S. Patent No. 6,317,544 ("Diehl"). Applicants submit that these claims are not anticipated and are patentable over Diehl for at least the reasons given in prosecution to date. However, purely to facilitate prosecution, Applicants have amended claim 29 to specify that the device includes a housing including a handle portion having a distal end and a proximal end and a user interface portion at the distal end of the handle portion. Further amended claim 29 specifies that the handle portion of the portable handheld device is grasped by a single hand of an operator of the portable handheld device and the apparatus is operated via the user interface during capture of the facial image. These features are not in Diehl. Accordingly, Applicants request these rejections be withdrawn.

The Rejections Under 35 USC §103

The remaining claims are rejected over Diehl in view of the SFS2000 (cited by Applicants on 10/11/2007) and further in view of one or more additional references. Applicants have repeatedly argued that, among other distinctions with Applicants' claims, none of the cited references permit the capture of an image at a portable handheld device while the device is held by a single hand of an operator. The reference relied on for these limitations in the current rejections is the SFS2000. The Office's position with respect to the SFS2000 references is set forth in the Final Office Action paragraph 12:

Diehl does not explicitly disclose the following claim limitations (emphasis added):

(1) Device comprising a housing including a handle portion having a distal end and a proximal end and a user interface at the distal end of the handle portion, while the handle portion of the portable handheld device is grasped by a single hand by an operator of the portable handheld device and the apparatus being operated via the user interface during image capture of the fingerprint

However, in the same field of endeavor SFS2000 discloses the deficient claim limitations, as follows:

A housing (*i.e. figure on page 1*) having including a handle portion having a distal end (*i.e. far end*) and a proximal end (*i.e. near end*) and a user interface at the distal end (*i.e. touch screen*) of the handle portion, wherein the handle portion and user interface portion are configured to allow the handle portion to be held by a single hand of an operator (*i.e. this feature is inherent in the structure*) and the apparatus operated via the user interface using the same hand during image capture of the fingerprint (*i.e. this feature is inherent in the structure*) and the finger receiving surface (*i.e. fingerprint scanner*) located at the distal end of the handle portion [page 1]

Applicants respectfully disagree and submit herewith a Declaration Under 35 USC § 1.132 by Anthony Misslin. The Declaration establishes that the SFS2000 is intended to be placed on a flat surface such that a subject can place his hand on the top surface of the device with the subject's finger positioned on the imaging surface of the device, and that there is no manner in which the device could be held by an operator during fingerprint capture. At least because the remaining references do not cure this deficiency, Applicants submit that the claims are patentable and request the rejections be withdrawn.

Conclusion

In view of the foregoing, it is submitted that all the claims are now in condition for allowance. Accordingly, allowance of the claims at the earliest possible date is requested.

If prosecution of this application can be assisted by telephone, the Examiner is requested to call Applicants' undersigned attorney at (510) 267-4106.

Please apply any other charges or credits to deposit account number 504480 (Order No. IDTXP044).

Respectfully submitted,
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